

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>JEFFREY HONSBERGER</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-030V

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### **DECISION AND ORDER**

On November 5, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Jeffrey Honsberger for a variance to reduce the 10-foot side structure lot line setback to 3 feet for a retaining wall in an R-20 (Residential: Single), zoning district, filed pursuant to Section 108.D.4.c(1)(b) of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. No one testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 10195 Maxine Street, is located in the 2<sup>nd</sup> Election District. It is identified on Tax Map 30, Grid 30-1, as Parcel 281, Lot 3 (the "Property").

2. The Property is a rectangular-shaped, 20,069 square foot, pipestem lot located in an R-20 (Residential: Single) zoning district. The petition plan identifies it as Lot 3 and it is located to the rear of Lot 2, which fronts on Maxine Street.<sup>1</sup> Its pipestem frontage is 21 feet. The pipestem runs along the west side of Lot 2, then widens to about 126 feet to the rear of that lot for a depth of about 156 feet.

3. The Property is improved by a two-story, single-family dwelling facing Maxine Street at a slight angle. At its closest point, the dwelling is about 60 feet from Lot 2's rear property line. The house is about 30 feet deep and 70 feet wide. Attached to the western façade is a small garage.

4. The dwelling and garage are accessed from a paved driveway running along the western pipestem section of the Property. The Property has a modest slope to the rear. About three feet from the western property line, just to the north of the garage is an older 64-foot long retaining wall located about 3 feet from the property line and a new 34-foot extension of that retaining wall. The topography drops off from the walls to the property line.

5. Adjacent properties are also zoned R-20. To the north is Lot 2. To the west are four lots, each improved with single-family detached dwellings. To the rear of these 4 lots are 4 pipe-stem lots, which are also improved with single-family dwellings. The properties to the east are improved with single-family detached dwellings fronting on Maxine Street. Those to the south are improved with single-family detached dwellings fronting on a cul-de-

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<sup>1</sup> The original lot was developed as part of the "Bloom's Addition to Eastside" subdivision

sac. The closest residence to the retaining wall appears to be more than 30 feet at it closest point.

6. The Petitioner, the Property owner, seeks to legitimize the new 34-foot extension wall through a structure setback variance. The requested wall would result in a reduction of the 10-foot side setback to 3 feet.

7. The Petitioner testified that the builder constructed the 64-foot retaining wall in 1992 to provide structural support for fill, which was needed to raise the dwelling's grade for sewer lines. This created a major drop-off to the west, creating the need for a retaining wall. The new retaining wall was constructed earlier this year for stabilization after the garage was built at the same grade as the house. He also stated that all the property owners in the subdivision resubdivided to create pipestem lots after a zoning change. According to the Petitioner, the neighbors immediately to the west like retaining wall because it reduces runoff.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, the original retaining wall is a unique physical feature because it is located within the required 10-foot setback area. As such, the original retaining wall is a noncomplying

structure and therefore constitutes a unique physical condition of the Property.

Consequently, I find that the original drop off and retaining wall are unique physical conditions that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed retaining wall will be used for a permitted purpose and will not change the nature or intensity of use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the location of the noncomplying structure—the wall--on the lot, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed retaining wall is of the same design and scale as the existing wall. It will not encroach into the setback more than the existing retaining wall. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

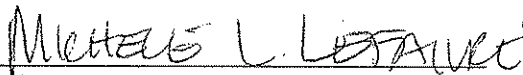
Based upon the foregoing, it is this 4<sup>th</sup> day of December 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Jeffrey Honsberger for a variance to reduce the required 10-foot side setback to approximately 3 (three) feet from a side lot line in an R-20 (Residential: Single) zoning district is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**

**Date Mailed:** 12/7/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.